In the Matter of HARLINGEN CITRUS COOPERATIVE *and* TEXAS FRUIT AND VEGETABLE WORKERS UNION, LOCAL 35, UCAPAWA (C. I. O.)

Case No. 16–C–1036.—Decided August 18, 1944

DECISION
AND
ORDER

On June 6, 1944, the Trial Examiner issued his Intermediate Report in the above-entitled proceeding, finding that the respondent had not engaged in the unfair labor practices alleged in the complaint and recommending that the complaint herein be dismissed, as set forth in the copy of the Intermediate Report attached hereto. Thereafter, the Union filed exceptions to the Intermediate Report and a brief. The respondent filed exceptions to the Trial Examiner's finding that the respondent is engaged in commerce within the meaning of the National Labor Relations Act, and a brief. None of the parties requested a hearing before the Board for the purpose of oral argument, and none was had.

The Board has considered the rulings of the Trial Examiner made at the hearing and finds that no prejudicial error was committed. The rulings are hereby affirmed. The Board has considered the Intermediate Report, the exceptions of the Union, the exceptions of the respondent, their briefs, and the entire record in the case, and hereby adopts the findings, conclusions, and recommendations of the Trial Examiner.

ORDER

Upon the entire record in the case, and pursuant to Section 10 (c) of the National Labor Relations Act, the National Labor Relations Board hereby orders that the complaint issued herein against the respondent, Harlingen Citrus Cooperative, Harlingen, Texas, be, and it hereby is, dismissed.

CHAIRMAN MILLIS took no part in the consideration of the above Decision and Order.

INTERMEDIATE REPORT

Mr. Robert F. Proctor, for the Board.

Strickland, Ewers and Wilkins, by *Mr. J. F. Ewers* and *Mr. Scott Toothaker*, of Mission, Texas, for the respondent.

Mr. Otis G. Nation and *Mr. Paul C. Scheer*, of Mercedes, Texas, for the Union.

STATEMENT OF THE CASE

Upon a charge duly filed on January 29, 1944, by Texas Fruit and Vegetable Workers Union, Local 35, UCAPAWA, affiliated with the Congress of Industrial Organizations, herein called the Union, the National Labor Relations Board, herein called the Board, by the Regional Director for the Sixteenth Region (Fort Worth, Texas), issued its complaint dated March 24, 1944, against Harlingen Citrus Cooperative, herein called the respondent, alleging that the respondent had engaged in and was engaging in unfair labor practices affecting commerce, within the meaning of Section 8 (1) and (3) and Section 2 (6) and (7) of the National Labor Relations Act, 49 Stat. 449, herein called the Act.

With respect to the unfair labor practices the complaint alleged, in substance, that the respondent: (1) from on or about February 16, 1944, disparaged and expressed disapproval of the Union; (2) interrogated its employees concerning their union affiliation; and (3) on or about January 24, 1944, discharged Iva Calloway, Iva Polk, Sally Dykes, and Virgie Malone, and thereafter failed and refused to reinstate them, because they joined and assisted the Union.

On April 6, 1944, the respondent filed an answer admitting some of the allegations of the complaint, but denying that it had engaged in any unfair labor practices.

Pursuant to notice a hearing was held on April 6 and 7, 1944, at Edinburg, Texas, before the undersigned, the Trial Examiner duly designated by the Chief Trial Examiner. The Board and the respondent were represented by counsel and participated in the hearing. The Union was represented by two organizers. Full opportunity to be heard, to examine and cross-examine witnesses, and to introduce evidence bearing upon the issues, was afforded all parties. At the close of the hearing the undersigned granted motions by counsel for the Board and for the respondent to conform the pleadings to the proof in formal matters, as well as a motion by counsel for the respondent to dismiss the complaint in certain particulars[1] and reserved ruling on a motion by counsel for the respondent to dismiss the complaint as a whole. This motion is disposed of in the recommendations hereinafter made.

The parties were advised that they might argue orally before the Trial Examiner, and might file briefs with the Trial Examiner within 14 days from the close of the hearing. None of the parties argued orally. On April 26, 1944, the respondent filed a brief.

Upon the entire record in the case, and upon his observation of the witnesses, the undersigned makes the following:

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[1] That portion of the complaint which the Trial Examiner dismissed read as follows:

"(The respondent) has interrogated its employees concerning their union affiliation and did on or about the date last mentioned call all or a number of employees together and request or demand that they and each of them sign a statement or letter in substance to the effect that the employees named in paragraph 4 did not belong to and had not been active in behalf of the Union, all for the purpose of bolstering its defense to the charge herein."

FINDINGS OF FACT

I. THE BUSINESS OF THE RESPONDENT

Harlingen Citrus Cooperative is a cooperative association, incorporated under the laws of the State of Texas. It has its principal office and place of business at Harlingen, Texas, where it operates a packing shed. Its membership is composed of five other cooperative associations, each a Texas corporation, which grow citrus fruit. The members of the respondent cooperative ship the fruit, consisting of oranges and grapefruit, to the respondent at its packing shed at Harlingen, where the respondent washes, waxes, grades, and stamps the fruit. The fruit is then packed in wooden boxes or other containers. All of it is sold through Rio Grande Valley Citrus Exchange, a cooperative composed of other cooperatives, one of which is the respondent. During the season of 1943 the respondet handled for its members citrus fruits to the value of approximately $750,000, more than 50 percent of which was thereafter shipped outside the State of Texas.

The respondent is engaged in commerce within the meaning of the National Labor Relations Act.[2]

II. THE ORGANIZATION INVOLVED

Texas Fruit and Vegetable Workers Union, Local 35, UCAPAWA, affiliated with the Congress of Industrial Organizations, is a labor organization admitting to membership employees of the respondent.

III. THE ALLEGED UNFAIR LABOR PRACTICES

A. The discharges

Iva Calloway, Iva Polk, Sally Dykes, and Virgie Malone are fruit packers. For several seasons they have travelled together throughout the lower Rio Grande Valley, working for various packing companies. They were employed by the respondent in October or November, 1943, and discharged on January 24, 1944, under circumstances hereinafter related. At the time of their discharge their foreman was Jesse Busby, who assumed his duties on January 14, succeeding Pitts, the previous foreman. The four discharged employees joined the Union on January 2, 1944, shortly after it was chartered,[3] wore their union pins in the plant, and asked other employees to join the Union. It is a fair inference, and the undersigned finds that the respondent knew that Calloway, Polk, Dykes, and Malone were active in behalf of the Union.[4]

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[2] The respondent contends in its answer that the Board is without jurisdiction because the employees of the respondent fall within the definition of "agricultural laborer" in Section 2 (3) of the Act. The undersigned finds no merit in this contention. See e. g. *North Whittier Heights Citrus Ass'n* v. *N. L. R. B.*, 109 F. (2d) 76 (C. C. A. 9) cert. den. 310 U. S. 632, and *Edinburg Citrus Association* and *Texas Fruit and Vegetable Workers Union, Local 35, UCAPAWA-CIO*, 55 N. L. R. B. 1242.

[3] The Union was chartered on December 5, 1943. Previous to that time various ones of the respondent's employees, including Calloway, Polk, and Malone, had been members of a local union, affiliated with the A. F. of L. At the time the Union was chartered it took over, under circumstances not explained in the record, the employees previously affiliated with the A. F of L.

[4] Although several employees who worked alongside the four discharged employees testified that they at no time observed a union pin on any of the four, and no such employee testified that he did, some of them, as well as others, testified that the dischargees had invited them to dances and meetings held by the Union. In general, these witnesses were uncertain as to whether the discharged employees belonged to the Union, or to the A F. of L. organization, which the Union took over. Although Busby, the foreman, testified

The work of a packer consists of taking fruit from a bin and placing it in standard size boxes or bags. When a container is packed the packer attaches to it a ticket bearing her packer number, and places the container on a conveyor belt by which it is moved along to the lidder. The lidder fastens lids on the boxes and drops the packer's ticket into a receptacle. The packer is paid from 2 to 6 cents per box or bag packed by her. Each day a list is posted in the packing shed showing the number of boxes and bags packed by each packer on the previous day. In the event of a discrepancy between the posted sheet and the packer's own count, the practice is for the packer to take the matter up with the foreman for adjustment.

On Monday, January 24, eight new packers started to work in the shed.[5] Shortly thereafter Calloway, Polk, Dykes and Malone protested the employment of the new packers to Busby, the foreman. Later in the morning Calloway protested to Busby that she had not been given credit for 59 boxes packed on January 20, or for 32 boxes packed on January 21. Dykes claimed that the respondent's count as to her was 50 boxes short for work performed on January 21, and Malone claimed that she was 60 short on two days of the preceding week. Polk made no claim of shortage. Busby promised Calloway, Dykes and Malone that he would look into the matter. He did so, according to his testimony, but could find no evidence of the shortages claimed. In the early afternoon Busby approached Calloway, Polk, Dykes, and Malone where they were standing among a group of other employees, and told them they were discharged. Upon being asked the reason, he stated that it was because of their claims of shortage.

Conclusions

At the hearing, the respondent contended that it discharged Calloway, Polk, Dykes and Malone because they were chronic complainers and trouble makers. As instances of alleged trouble making it cited not only the claims of shortages, which the respondent contends were not made in good faith, but the protests of the dischargees concerning the employment of the eight new packers on January 24.

It was admitted that mistakes in the counting of packed boxes and bags were of almost daily occurrence. Various witnesses testified, however, and it is clear from the record, that such mistakes seldom concerned more than five or six boxes for any one packer in any one day, and generally consisted of one or two out of an average daily packing of from 100 to 200 boxes. It was reasonable for the respondent to believe that claims such as those advanced by Calloway, Dykes and Malone, ranging from 32 to 59 boxes in one day, and amounting to a substantial proportion of their average daily production, were provocative and not made in good faith.[6] Although Polk admittedly advanced no claims of short-

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that he had no knowledge of the membership of either Calloway, Polk, Dykes, or Malone, the undersigned does not credit his denial. Busby, as has been found, became foreman on January 14. Prior to that time he was a non-supervisory employee and as such, the undersigned believes and finds, was aware of the organizational efforts of the Union and the predecessor A. F. of L. group and of the activity of the dischargees in one or both of these organizations.

[5] They were the wives of soldiers stationed at a nearby air base, and were employed at the request of the Selective Service Board, and following the request of the United States Employment Service that the respondent engage in training women packers who would be capable of taking the place of men packers in other packing plants when the latter should be called into the armed forces. Five or six weeks after their hiring they left the respondent's employment.

[6] No evidence was adduced, aside from their own assertions that Calloway, Dykes and Malone packed more boxes in the days in question, than they were credited with.

ages, Busby discharged her, the undersigned believes, because of her close association with Calloway, Dykes, and Malone,[7] and the habit of the employees, supervisory and non-supervisory alike, of regarding an act by any one of the group as the act of the whole group.[7] It is immaterial that, so far as the record shows, Polk had done nothing upon which a discharge would ordinarily be based.

As has been found, the respondent knew of the activity in behalf of the Union of Calloway, Dykes, Polk, and Malone. Their discharges within a month after joining the Union raises the suspicion that they were occasioned by such membership and activity. On the record as a whole, however, and particularly in view of the absence of any evidence of hostility toward the Union or union membership, the undersigned is unable to make such a finding. He finds, instead, that the discharge of the four employees was for reasons not connected with their union membership and activity.

CONCLUSIONS OF LAW

1. The operations of the respondent, Harlingen Citrus Cooperative, constitute trade, traffic, and commerce among the several States, within the meaning of Section 2 (6) of the Act.

2. Texas Fruit and Vegetable Workers Union, Local 35, UCAPAWA, affiliated with the Congress of Industrial Organizations, is a labor organization within the meaning of Section 2 (5) of the Act.

3. The respondent has not engaged in unfair labor practices within the meaning of Section 8 (1) of the Act.

4. By discharging and refusing to reinstate Iva Calloway, Iva Polk, Sally Dykes, and Virgie Malone, the respondent has not engaged in unfair labor practices within the meaning of Section 8 (3) of the Act.

RECOMMENDATION

Upon the basis of the foregoing findings of fact and conclusions of law, the undersigned recommends that the complaint against Harlingen Citrus Cooperative be dismissed.

As provided in Section 33 of Article II of the Rules and Regulations of the National Labor Relations Board, Series 3, effective November 26, 1943, any party or counsel for the Board may within fifteen (15) days from the date of the entry of the order transferring the case to the Board, pursuant to Section 32 of Article II of said Rules and Regulations, file with the Board, Rochambeau Building, Washington, D. C., an original and four copies of a statement in writing setting forth such exceptions to the Intermediate Report or to any other part of the record or proceeding (including rulings upon all motions or objections) as he relies upon, together with the original and four copies of a brief in support thereof. Immediately upon the filing of such statement of exceptions and/or brief, the party or counsel for the Board filing the same shall serve a copy thereof upon each of the other parties and shall file a copy with the Regional Director. As further provided in said Section 33, should any party desire permission to argue orally before the Board request therefor must be made in writing to the Board within ten (10) days from the date of the order transferring the case to the Board.

HORACE A. RUCKEL,
Trial Examiner.

Dated June 6, 1944.

[7] Employees, while testifying, frequently employed the pronoun "they" when attempting to relate statements made by one of the four discharged employees. It is apparent that the four employees constituted a group which was to an extent separate and apart from the other employees.